



# Social Networking Sites' Terms of Use: addressing imbalances in the user-provider relationship through *ex ante* and *ex post* mechanisms

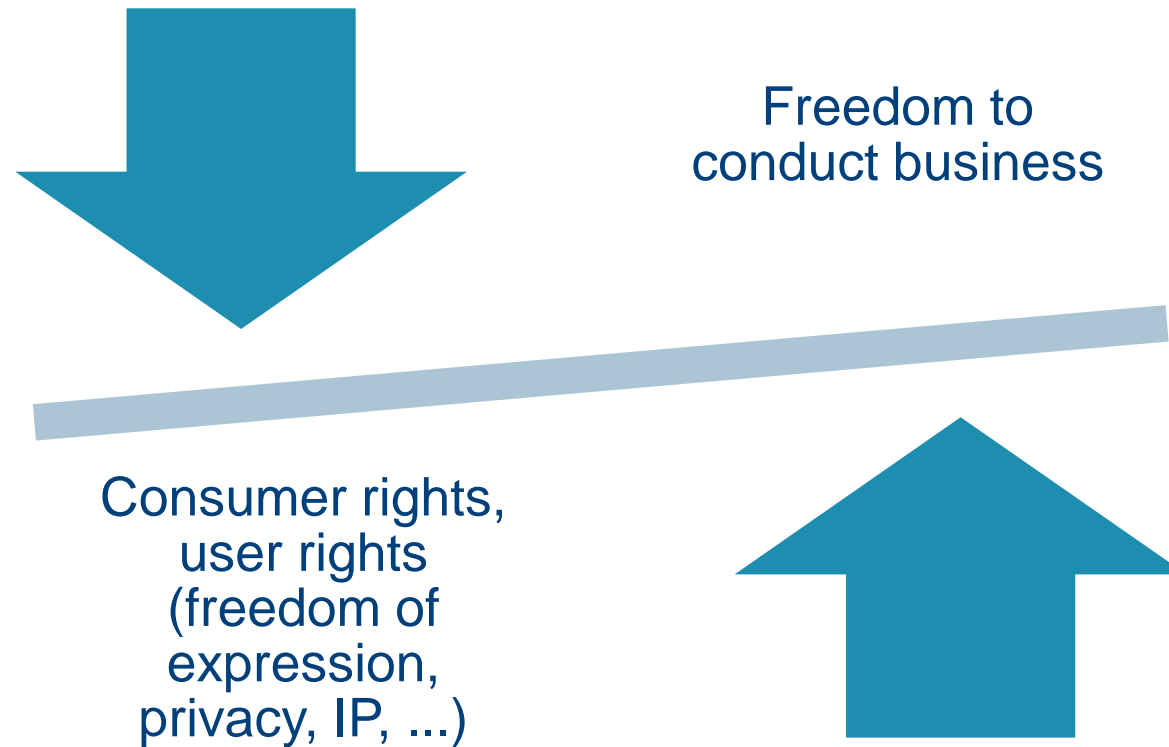
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Interdisciplinary Centre for Law & ICT - KU Leuven

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# Broader context

- Balancing of fundamental rights in the SNS context



# “The informed user”



facebook [Sign Up](#)

Email or Phone  Password  [Log In](#)

☒ Keep me logged in [Forgotten your password?](#)

## Statement of Rights and Responsibilities

This help content is not available in your language. Please choose from one of our supported languages:

Please Select a Language ▾

You may also find support from other users who speak your language by visiting our user forum.

This agreement was written in English (US). To the extent any translated version of this agreement conflicts with the English version, the English version controls. Please note that Section 17 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: November 15, 2013.

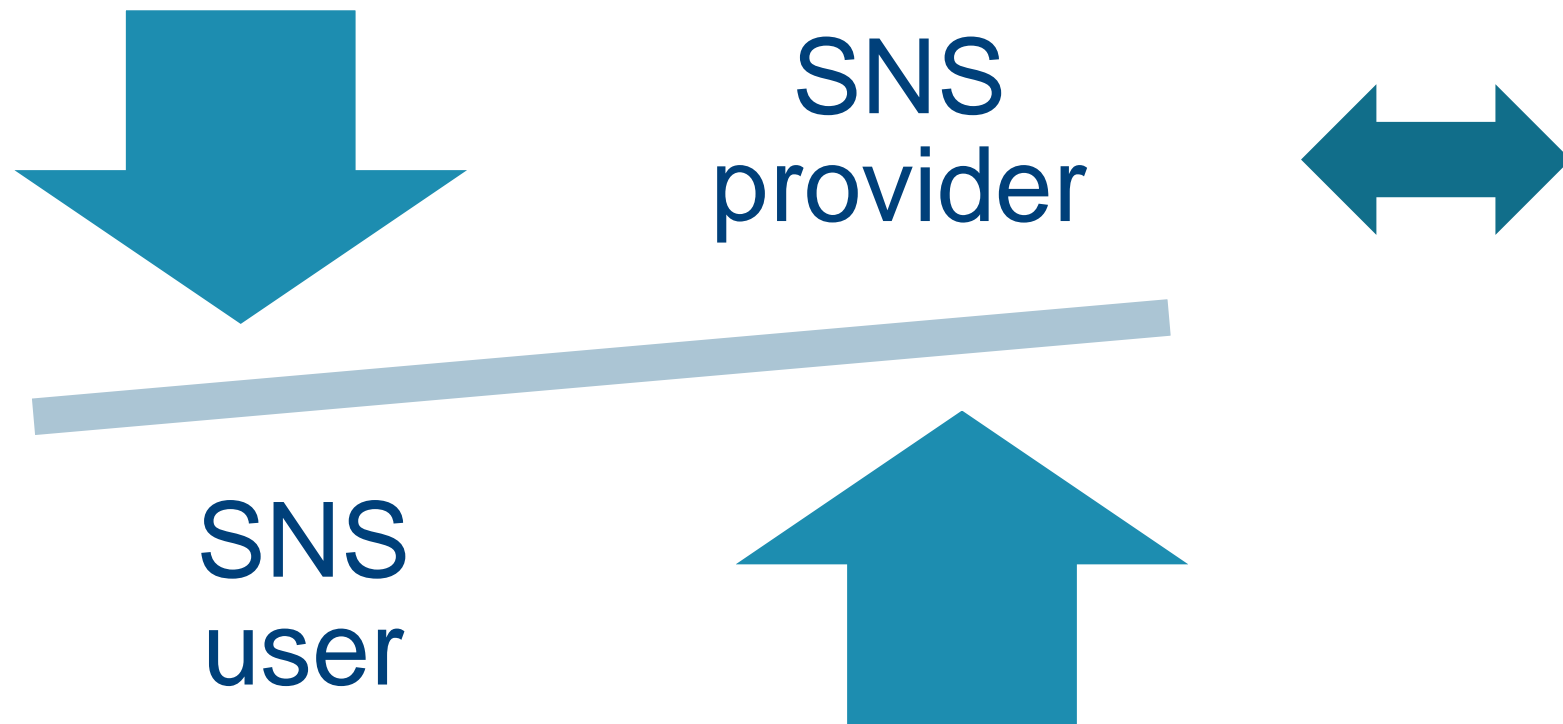
## Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement," "Terms," or "SRR") derives from the Facebook Principles, and is our terms of service for the relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement, and

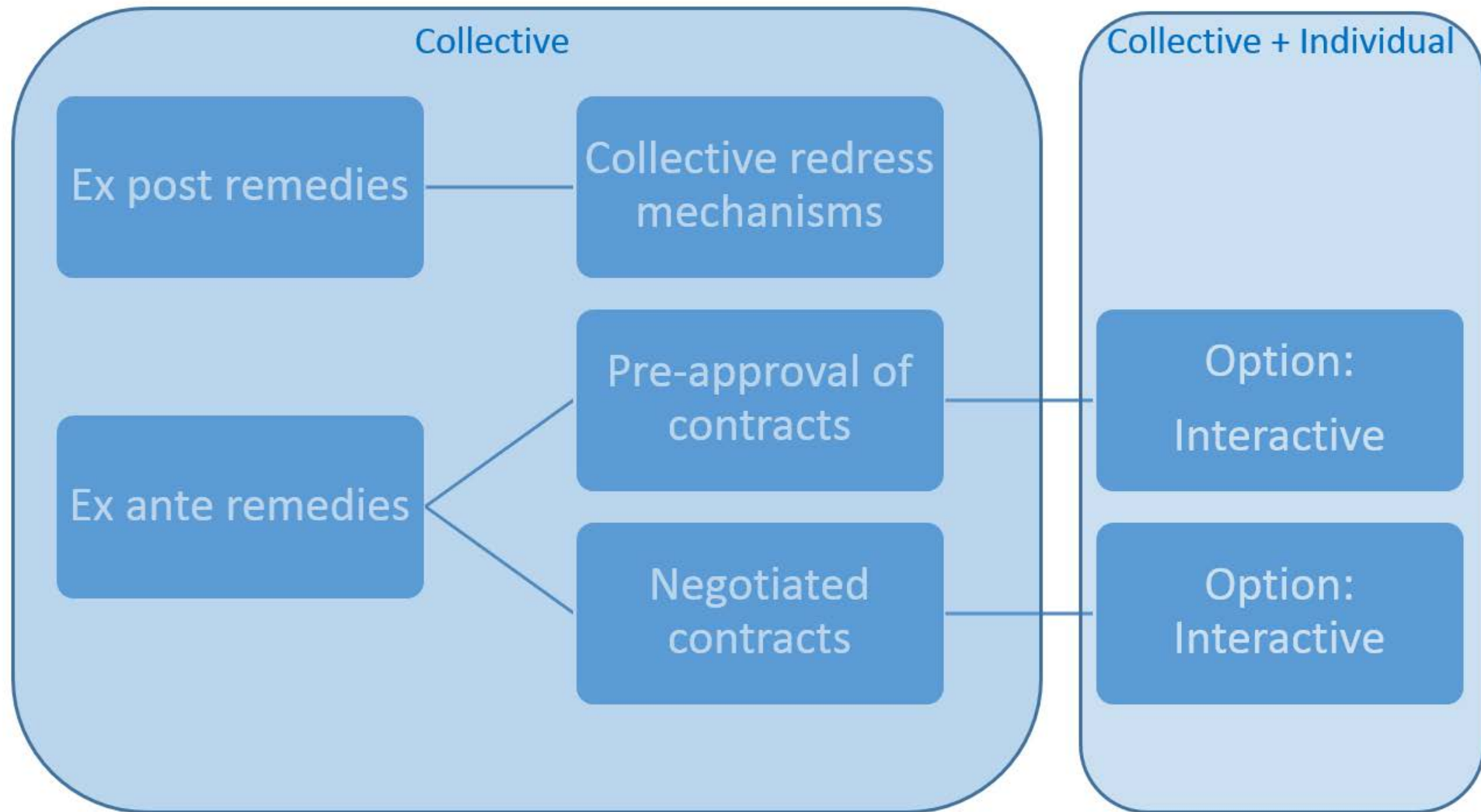
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More than 1 billion  
active users!

‘Standard  
contracts’



Will a single  
user go to  
court?



Ex post



# Collective redress mechanisms

- Commission Communication 2013:

*Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, many similar legal claims to be bundled into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law.”*

California & Canada  
~ Facebook ‘sponsored stories’

# Collective redress mechanisms in Europe

Group actions

Representative  
actions

Test  
procedures



France: UFC v. AOL France  
Germany: VBVZ v. Facebook, ...  
Belgium: Test Aankoop v. Apple



# Collective redress mechanisms in Europe

- Currently fragmented and underused
- Lack of awareness: users and consumer organisations?
  - ‘Free services’?
  - Impact not immediately tangible?
- Cross-border?

→ pervasive nature SNS, infringements on privacy and consumer rights



# Ex ante

→ intervention before agreement with ToU

# Pre-approval of contracts

- Review and approval to ensure fairness and efficiency
- Control by a third party → Independent body? Resources? Consumer organisation?
- Voluntary? Incentives? Immunisation against future claims?
- Co-regulatory?
- Risk of freeriding? No shopping for terms? Never read ToU again? SNS dominant player in the market?

# Negotiated contracts

- ‘Model form contract’ through negotiation between traders and consumers / consumer organisations
- Improve consumers’ contractual position, allow for competing interests to be taken into account, lower enforcement costs (enhancement of enforcement costs against one-sided provisions)
- Risk of freeriding? No shopping for terms?
- Self-/co-regulation?
- Ex.: Consumer Ombudsman (Scandinavia)

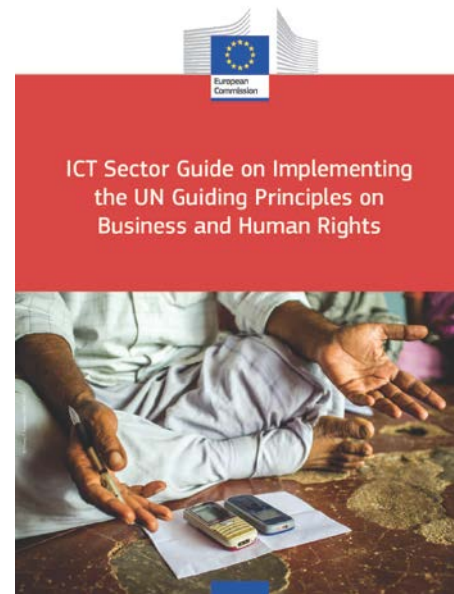
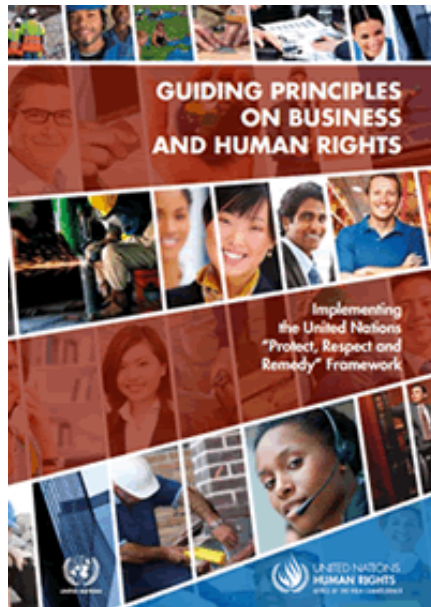
# Interactive contracts

- Customisation of certain parts of the contract
  - Eg. place of storage of personal data, applicable law, license condition IP
- More desirable terms, taking into account personal values (vb. more/less privacy)
- Cost? Too much choice?

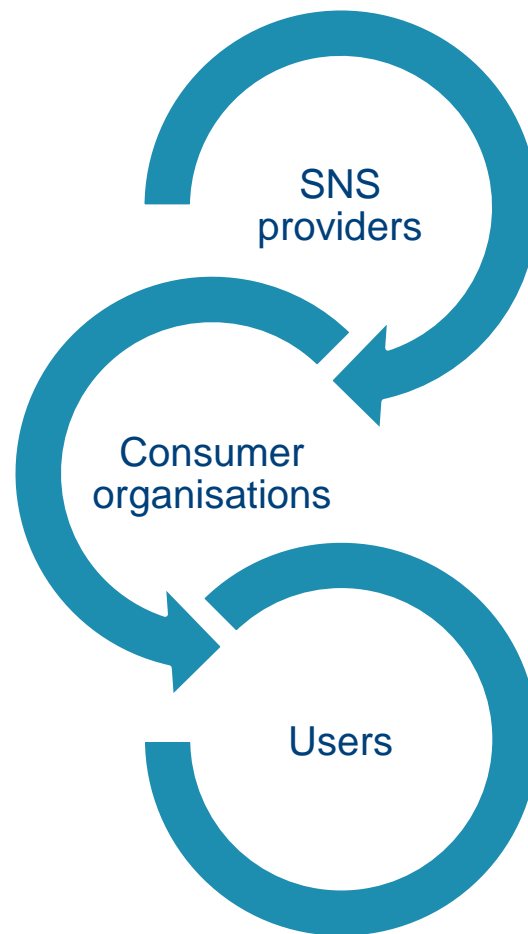


# Incentives?

# SNS providers and CSR



- Supporting the emergence of ***knowledgeable and responsible*** (future) users
- Developing and maintaining ***trust and confidence*** towards services  
→ sustain competitive knowledge economy & digitally skilled labour force



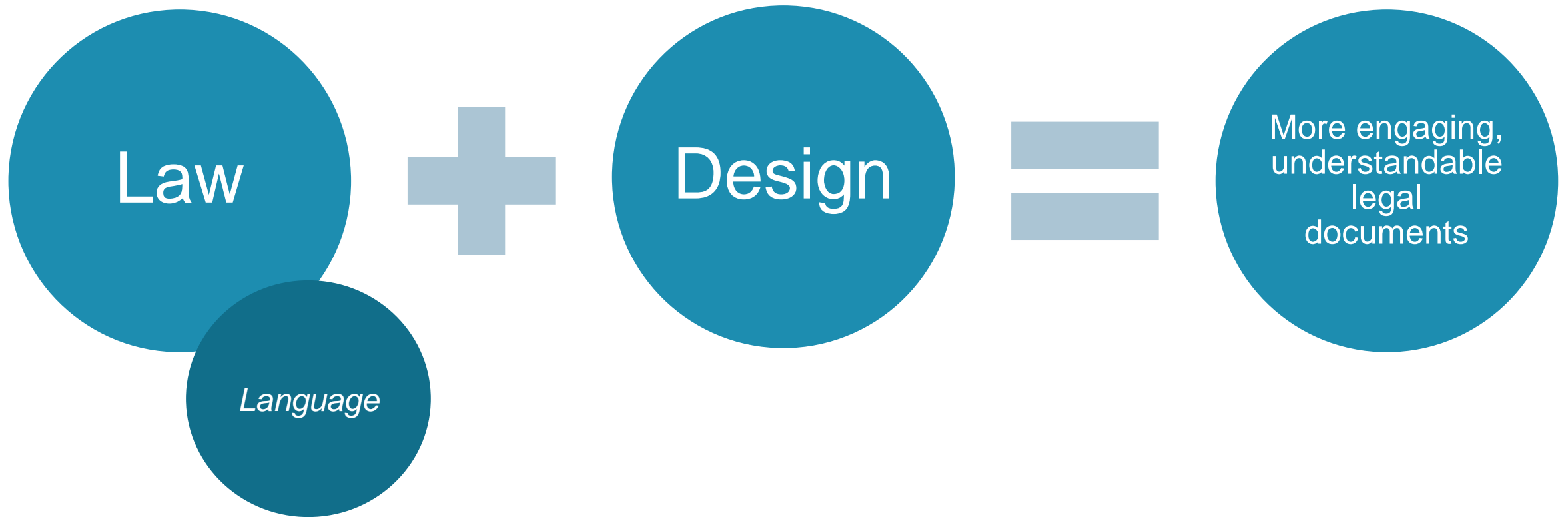
Mobile apps!

European level

Participation & awareness !



# Visual law lab



# Thank you!

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**EMSOC**

User Empowerment in a Social Media Culture

[www.emsoc.be](http://www.emsoc.be)

Research Fund Flanders

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